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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re Isaiah B., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B217881
(Super. Ct. No. J-1164319)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
PROTECTIVE SERVICES,

Plaintiff and Respondent,

v.

JOHN M.,

Defendant and Appellant.

John M., the father of 11 year old Isaiah B., appeals a July 23, 2009 visitation order providing that contact between appellant and Isaiah is contingent upon the recommendation of Isaiah's therapist and that visitation be closely supervised. (Welf. & Inst. Code, § 388.)¹ We affirm. Isaiah is in long term foster care and receiving permanency planning services at a group home. The trial court did not abuse its discretion in concluding that modification of visitation was in Isaiah's best interest. (§ 388; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

¹ All statutory references are to the Welfare and Institutions Code.

Procedural History

On October 23, 2006, Santa Barbara County Child Protective Services (CPS) detained Isaiah and filed a dependency petition for failure to protect (§ 300, subd. (b)), serious emotional damage (§ 300, subd. (c)), no provision for support (§ 300, subd. (g)) and sibling abuse (§ 300, subd. (j)). CPS had received 31 prior referrals for general neglect and emotional and sexual abuse. The trial court sustained the petition based on reports that Isaiah had sexually abused a half-sister, was living with appellant but not being provided for, and was not taking his ADHD medication.

After appellant and the biological mother conceded jurisdiction, the trial court ordered family reunification services and foster care. CPS, however, was unable to find suitable foster placement due to Isaiah's history of sexually acting out, oppositional defiance disorder, and ADHD. Isaiah was in emergency shelter care and in desperate need of intensive services and long term care. On July 11, 2007, the trial court granted a section 387 petition to place Isaiah in the ChildHelp Group Home (ChildHelp) in Riverside County.

At the six month review hearing, CPS reported that the mother was not following through with services. Appellant enrolled in an 18-month substance abuse program following a 2006 arrest but was arrested again on January 31, 2007, for disorderly conduct and intoxication and sentenced to 90 days work furlough.²

The trial court extended reunification services and ordered that appellant undergo a psychological evaluation. Doctor Muriel Yanez conducted the psychological evaluation and reported that appellant suffered from mental health issues and was not fit or competent to parent Isaiah.

At the 12 month review hearing, CPS reported that appellant had not completed parenting classes, had not completed an anger management or a substance

² Appellant has a lengthy criminal history that includes arrests for obstructing a peace officer, fighting, false identification to a peace officer, grand theft, battery of a spouse, illegal possession of tear gas, corporal injury on a spouse/cohabitant, driving while intoxicated, evading a peace officer, making criminal threats, and disorderly conduct while intoxicated

abuse program, was not complying with case plan objectives, and did not understand Isaiah's needs. Isaiah suffered from severe mood swings and bouts of aggressive behavior. Appellant blamed CPS and others for his problems and demanded that Isaiah be taken off psychotropic medication.

On June 5, 2008, the trial court terminated family reunification services, set the matter for a section 366.26 hearing, and ordered supervised monthly visits and weekly phone contact.

At the section 366.26 hearing, the trial court ordered long term foster care with supervised visits once a month and reasonable phone contact. The January 12, 2009 order provides: "Visits are to be supervised by group home staff, with options for liberalization upon request from therapist"

Appellant, however, engaged in irrational, disturbing behavior that was detrimental to Isaiah's safety and welfare. Appellant filed complaints with the Lompoc Police, the Santa Barbara County Grand Jury, the Commission on Judicial Performance, the Riverside County Grand Jury, and the California Department of Justice, accusing CPS and ChildHelp of illegally detaining Isaiah and illegally administering drugs.

On July 23, 2009, appellant filed a section 388 petition (JV-180 form) to return Isaiah to appellant's custody. The trial court denied the petition and granted CPS's section 388 petition to modify visitation. The court ordered that contact between appellant and Isaiah M. be contingent upon the recommendation of Isaiah's therapist and that visitation be closely supervised by professional staff. (§ 388.)

Defective Notice of Appeal

The notice of appeal states that appellant is appealing from the July 23, 2009 order "denying my JV-180 [petition] and denying me a hearing regarding my JV-180." The JV-180 petition sought an order to restore parental custody and close the case.

CPS argues that appellant waived his right to appeal from the visitation order which was entered the same day that appellant's JV-180 petition was denied. We liberally construe the notice of appeal to encompass the order modifying visitation. (Cal. Rules of Court, rule 8.400, subd. (c)(2); *In re Joshua S.* (2007) 41 Cal.4th 261, 272.)

CPS argues that the appeal has been mooted by an October 16, 2009 visitation order that supersedes the July 23, 2009 order and restricts visitation to written contact.³ A dismissal for mootness is not automatic and will not be granted if the purported error could affect the outcome of subsequent proceedings. (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.) We decline to dismiss the appeal as moot.

Best Interest of Child

After reunification services have been terminated and the child is placed in long term foster care, visitation may be modified where there has been a change of circumstances and it is in the best interest of the child. (§§ 388; 366.26, subd. (c)(4)(C).) That is the case here.

Doctor Yanez's psychological evaluation states that appellant "suffers from a mental illness which renders him susceptible to significant levels of psychological difficulties, including poor impulse control, management of anger, and distortions in his thinking that render him ineffective as a parent at present. He has a paranoid orientation toward others, [and] has had a history of becoming angry, hostile and aggressive toward others. He has not been able to control his own impulses and set his feelings aside in order to assist his child. It is unlikely that if he believes an intervention or requirement is 'unfair' or 'uncalled for' with regard to his son, he will not comply. He will react with anger and externalize blame for the loss of his child such that he is at high risk to act out towards others as he done in the past. He is already feeling overwhelmed . . . [and] continues to have difficulty in meeting his own needs"

³ We granted CPS's motion to augment the record to include the October 16, 2009 order and a January 11, 2010 status review report which indicates that the October 16, 2009 order is the current visitation order. The October 16, 2009 order is based on evidence that appellant continues to make angry and threatening phone calls to ChildHelp and suffers from serious mental health issues. The therapists at ChildHelp requested that the trial court suspend in-person and telephone communication but that appellant be allowed to send Isaiah letters which will be inspected for appropriate content before the letters are passed on to Isaiah.

After Isaiah was placed in long term foster care, appellant abused visitation, made threatening phone calls, and engaged in highly disruptive behavior. Appellant told Isaiah that appellant was a secret agent, that President Obama was flying to ChildHelp, that Isaiah should stop taking prescribed medication, and that Isaiah should kick and scream if someone tried to take him. During a July 10, 2009 visit, appellant had Isaiah call the court clerk and read a document stating that Isaiah was being drugged and held against his will. Appellant told Isaiah to pack his belongings because appellant would be awarded custody at a July 13, 2009 status review rehearing.

After the visit, Isaiah complained of stomach pains and was afraid of what would happen at court. Isaiah loved appellant but did not think he should live with him.

When asked about the visit, appellant screamed at a CPS supervisor and demanded that his phone calls be routed through to Isaiah. Appellant told CPS and ChildHelp that he had contacted the CIA, the FBI, the grand jury, the California State Bar, and the White house, and had sent documentation that "proves" Isaiah was unlawfully detained and drugged. On July 14, 2009, appellant called and warned that "the CIA will be coming to ChildHelp so they better be ready for warfare."

The ChildHelp clinical coordinator requested that appellant not come to the group home and that visits be held offsite and supervised. ChildHelp called the sheriff on July 10, 2009 and on July 15, 2009 after appellant threatened to take Isaiah and phoned in a kidnap threat. Isaiah's therapist was concerned because the calls and visits were upsetting Isaiah. Appellant threatened to take Isaiah and told a ChildHelp receptionist to "[g]et my son now, I don't care if you have to take him by the neck and drag him to the phone."

ChildHelp was concerned, not just for Isaiah's well being, but the safety of its staff. Based on Doctor Yanez's psychological evaluation and incident reports concerning appellant's threats, abusive phone calls, and inappropriate behavior, the trial court did not abuse its discretion in modifying visitation.

Delegation of Authority

Appellant asserts that the July 23, 2009 order unlawfully delegates all visitation decisions to Isaiah's therapist. (See e.g., *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1505.) We reject the argument because a juvenile court may order that visitation be facilitated by the child's or parent's therapist as was done here. (See *In re Chantal S.* (1996) 13 Cal.4th 196, 213-214.) Juvenile courts frequently ask for and consider the recommendations of child services agencies, mental health professionals, therapists, and child care givers on visitation matters. "That is because dependency courts 'simply do not have the time and resources to constantly fine tune an order in response to the progress or lack thereof in the visitation arrangement, or in reaction to physical or psychological conduct which may threaten the child's well being.' [Citation.] . . . [T]he ultimate supervision and control over this discretion must remain with the court [Citations.]" (*In re Julie M.* (1999) 69 Cal.App.4th 41, 51.)

The July 23, 2009 visitation order provides that contact between appellant and Isaiah is contingent upon the recommendation of Isaiah's therapist and that visitation be closely supervised. The ultimate decision to grant or deny visitation still lies with the trial court as reflected in the October 16, 2007 order imposing further restrictions on visitation. Appellant retains the right to file a section 388 petition if there is a change of circumstances and more liberal visitation is in the best interest of the child.

Assuming, arguendo, that the July 23, 2009 visitation order delegates too much judicial discretion, appellant was not prejudiced thereby. "As noted above, father does not contest the position that on this record the juvenile court would have been within its discretion if it simply denied him any visitation. The fact that the juvenile court rejected that course, and instead issued the restrictive order challenged now, amounts to a windfall to father, not a violation of his rights. [¶] If any party stands to be prejudiced by the order, it is not father, but instead mother and/or [Isaiah] — neither of whom contests the order." (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 214.)

Appellant asserts that visitation is a fundamental right but a parent has no right to abuse visitation or sabotage a child's therapy and foster care. (See e.g., § 362.1,

subd. (a)(1)(B) [visitation order may not jeopardize child's safety; *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2006) 145 Cal.App.4th 692, 699.) Appellant has serious ongoing mental health issues and continues to engage in inappropriate behavior that is detrimental to Isaiah's safety and welfare. The trial court did not err in modifying visitation to restrict future contact and make in-person visits and telephone contact contingent upon the recommendation of a mental health professional. "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.]" (*In re Stephanie M., supra*, 7 Cal.4th at p. 317.)

The judgment (July 23, 2009 order modifying visitation) is affirmed.

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YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

James E. Herman, Judge
Superior Court County of Santa Barbara

Maureen Keaney, under appointment by the Court of Appeal, for
Appellant.

Dennis A. Marshall, County Counsel, County of Santa Barbara, aria Salido
Novatt, Senior Deputy, for Respondent.